

REMARKS

Claims 1-27 are pending in the present application. Claims 1-5, 7 and 11-27 were rejected under 35 U.S.C. §102(b) as being unpatentable over Leiter, U.S. Patent No. 5,022,744. Claims 8-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Leiter, U.S. Patent No. 6,023,328. Claim 6 was rejected under 35 U.S.C. §103(a) as being unpatentable over Leiter in view of Weiss, U.S. Patent App. Pub. No. 2003/0011910 A1.

The claims have now been amended. Claims 12, 22 and 26 have been canceled. New claims 28-31 have been added. Reconsideration of the application is respectfully requested.

Amendment to the independent claims

Independent claims 1 and 19 have now been amended so as to respectively recite a microscope and a method including changing the numerical aperture of the illuminating optical system using an aperture device "so as to change a resolution and contrast of the microscope." Support for the amendment may be found, for example, at paragraph 0003 of the present specification.

Rejection under 35 U.S.C. §102(b), §103(a)

Claims 1-5, 7 and 11-27 were rejected under 35 U.S.C. §102(b) as being unpatentable over Leiter, U.S. Patent No. 5,022,744. Claims 8-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Leiter, U.S. Patent No. 6,023,328. Claim 6 was rejected under 35 U.S.C. §103(a) as being unpatentable over Leiter in view of Weiss, U.S. Patent App. Pub. No. 2003/0011910 A1.

Independent claims 1 and 19, as amended recite changing a numerical aperture of the illuminating optical system "so as to change a resolution and contrast of the microscope," and "concurrently control[ing] the control device [of the light source] and the spectral correction device so that, upon a change in the numerical aperture, both a light flux through the illuminating optical system and a spectral intensity distribution of light directed onto the specimen remain substantially unchanged." It is respectfully submitted that Leiter does not teach these features of claims 1 and 19. Specifically, Leiter does not change the numerical aperture so as to change a resolution and contrast of the microscope, as recited. In contrast, Leiter system merely opens or closes a diaphragm 25 so as to change an intensity of

illumination to compensate for insertion of a filter into the illumination beam path. See Leiter, col. 3, line 65 to col. 4, line 3. Leiter does not modify the numerical aperture at all. In contrast, Leiter merely changes the illumination light intensity using the diaphragm 25. See Leiter, col. 3, lines 1-3, and Fig. 1. The numerical aperture of the system is not changed. The term "numerical aperture" is well known to those of ordinary skill in the art. As discussed in the present specification at paragraph 0003, a modification of the numerical aperture of the illuminating optical system causes a change in the resolution achievable with the microscope and a change in the contrast of the generated image. The location of the diaphragm 25 of Leiter makes it clear that a change in the diaphragm would not change the numerical aperture. Because the diaphragm 25 is disposed upstream of the light guide 5 (see Fig. 1 of Leiter), a change in the diaphragm could not cause a change in the numerical aperture with the attendant change in the resolution and contrast of the microscope.

Nor does Leiter teach concurrently controlling the control device of the light source and the spectral correction device so that, upon a change in the numerical aperture, both the light flux through the illuminating optical system and the spectral intensity distribution remain substantially unchanged, as recited in claims 1 and 19. Firstly, Leiter does not control the light source upon the changing of the numerical aperture, as recited. In contrast, Leiter merely changes the diaphragm 25 itself to vary the light coming from the light source. Even assuming that changing the diaphragm 25 somehow does change the numerical aperture (which, as discussed above, cannot be the case) the light source in Leiter is nevertheless not otherwise controlled, as claims 1 and 19 and require. Secondly, Leiter does not control the spectral correction device upon the changing of the numerical aperture, as recited. In contrast, Leiter merely inserts a filter into the illumination beam path to achieve a desired color temperature. See Leiter, col. 3, lines 49-55. Even assuming that changing the diaphragm 25 somehow does change the numerical aperture (which, as discussed above, cannot be the case) Leiter nowhere teaches controlling the spectral correction device to maintain the spectral intensity distribution upon such a change in numerical aperture. Because Leiter fails to teach all the limitations of independent claims 1 and 19, it cannot anticipate either of the claims or any of their respective dependent claims.

With specific regard to dependent claim 6, it is respectfully submitted that the Weiss reference is not eligible as prior art to the present application. Weiss is not prior art under 35

U.S.C. §102(a) because the inventive entity of the Weiss reference (Albrecht Weiss) is the same as the inventive entity of the present application. See MPEP §2132 III. Similarly, Weiss is not prior art under 35 U.S.C. §102(e) because Weiss was not filed "by another," as required by 35 U.S.C. §102(e). Because Leiter fails to teach or suggest the "the control device is configured to modify electrical power delivered to the light source" feature recited in claim 6, Leiter cannot render claim 6 obvious. It is therefore respectfully submitted that claim 6 is patentable over Leiter for this additional reason,

Withdrawal of the rejection of claims 1-5, 7 and 11-27 under 35 U.S.C. §103(a) based on Leiter, the rejection of claims 8-10 under 35 U.S.C. §103(a) based on Leiter, and the rejection of claim 6 under 35 U.S.C. §103(a) based on a combination of Leiter with Weiss, is respectfully requested.

New claims


New claims 28-31 have been added. Independent claim 28 recites features of claims 1 and 6. Dependent claims 29-31 recite features of dependent claims 3, 7 and 16, respectively. It is respectfully submitted that new claims 28-31 are patentable over the cited references for at least the same reasons as claims 1 and 6 are.

CONCLUSION

It is respectfully submitted that the application is now in condition for allowance.

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Respectfully submitted,

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